



ORIGINAL ARTICLES

Implementation of the Fisheries Laws and Policy in Bangladesh: A Case Study

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ABSTRACT

The fisheries resource is one of the fundamental components of our environment. It is also one of the main protein sources to the people of the world. Its idea and concept is originated in the early stage of the human civilization which has been developing as per the needs of the human being on this earth. Bangladesh is not an exception to it. It is a land criss-crossed with hundred of rivers and abounds in fishing. There is a proverb 'machee bhattee Bengali', that means Bangali is living with fish and rice. The fisheries resources are among the richest in the world and the inland fisheries production ranks third globally, behind China and India. Bangladesh inland water bodies are known to be the habitat of 266 species of indigenous fish, thirteen exotic fish, about 26 freshwater mollusks, and 150 birds. There are some categories of major fisheries resources, such as inland open water 4.05 million ha, inland closed water including brackish water 0.39 million ha, brackish water 0.14 million ha and marine water etc. Around 260 fresh water fish species, 475 marine, 24 prawns, 36 shrimp and 12 exotic species are available through natural production or cultured production in the country. Some fisheries projects under the different departments have been carrying out in this regard. Men would depend on the aquaculture directly or indirectly to quench their thirst from the very beginning of the life style of the human being. The ancient Chinese are the first nation to begin this cultivation that is identified by the writings of Fanlai, although the aquaculture was started in the eighteen century in USA. Some privileges on fishing were identified and enjoyed during the British Period in 1734-1947. But unfortunately, this resource has been facing numerous problems such as extinction of fish species, unwise use of natural resources including fisheries etc. Therefore, some natural impacts such as natural shortage of fish stock, unhealthy human soul with many diseases etc; have been observed. In fact, Bangladesh is rich in fisheries biodiversities. But its environment and beauty have also been facing with the same kind. However, in order to cope with these problems, the government of Bangladesh has been taking some important initiatives such as enactment of laws, formulation of new policies and action plans etc. But it regrets that the existing fisheries laws and policies have not been yet implemented properly due to some practical grounds such as lack of co-ordination, weak enforcement of laws, insufficient manpower, corruption, logistic supports etc. This work has been done based on case studies with stakeholders working in the field level administration consisting of 25 respondents in the different criteria in the district of Jhenidah, Bangladesh.

Key words: Compliance, Fisheries Laws and Policies.

Background:

Bangladesh is rich in aquaculture and aquatic resources. Fish and fisheries is part and parcel of the culture and heritage of Bangladesh. There are remarkable varieties of marine and fresh water fish species in Bangladesh that provides protein and nutrition for the people of Bangladesh. It contributes 5.3 percent of GDP and 6 percent of foreign exchange earnings through export (Economic Review, 2003). Fish is one of the main sources of our protein that provides 63% of national animal protein. About 20 million people earn their livelihood by fishing, of them 61% from open water bodies, 23% from the marine sources and 16% from the closed water bodies (Mothsha Pokkha, 2002). Fisheries sector plays an important role in employment and poverty alleviation and economic development in Bangladesh. Once Bangladesh was rich in fresh water natural fish and wetlands was full in fish in year round. At present fish and fish species are implicated with much problems such as over-fishing, indiscriminate killing of juveniles, drainage and irrigation projects without having any regard to fish breeding and rearing needs, water pollution, fish disease, defective and insufficient fish conservation laws, inadequacy of proper processing, marketing, siltation, degradation of wetland, changes in river courses, land reclamation, unscrupulous use of chemicals in agriculture, destruction of spawn, inadequate knowledge, unwise use of natural resources etc (Fifth Five Year Plan 2002). Both flora and fauna are threatened with it (Yousuf

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Abdullah and Nasir Uddin, 2008). With a view to overcome of those problems, the Government of Bangladesh has passed several fisheries laws and policies. There are some categories of major fisheries resources, such as inland open water 4.05 million ha, Inland closed water including brackish water 0.39 million ha, brackish water 0.14 million ha and marine water 16.61 million ha. In order to develop and administer the fisheries resources in Bangladesh, there are three kinds of fisheries laws passed in this regard. In the meantime, the government of Bangladesh passed around 50 international environmental treaties including the Convention on Biological Diversity. The biodiversity issue has been hotly discussed but not yet a separate and specific policy on biodiversity has not yet been passed. The various departments of the government are responsible for this issue. It emphasizes the need to focus on maintain the ecological balance along with the overall development of the country.

2. literature review:

In order to make the compliance with the existing environmental laws and policy, we need to discuss with the following issues. The following discussion may directly or indirectly bear impacts on the fisheries in Bangladesh. However the the finds that there are some works on these issue but not really too much. It is a new addition to the legal jurisprudence. Some of the relevant works and literatures that may be highlighted as follows:

Abdullah Yousuf and Nasir Uddin (2008) ,entitled '*State of Bio-Diversity and Conservation Compliance in Bangladesh*' has discussed about the biodiversities including the fisheries in Bangladesh emphasizing in the Forest Policy and Environment Policy including the Bangladesh National Biodiversity Strategy and Action Plan. This paper also deals with natural resource management issues with implementation status and issues. This paper is quite relevant to this research work.

John Cruden (2008) '*Creating value through compliance and enforcement*' explored how strengthening compliance with environmental requirements creates both public and private values. He emphasized on the necessity for a level playing field, the rule of law; to ensure environmental benefits, the strong independent judiciary and the need for international cooperation in order to make compliance issue.

Justice Suryakant (2008) has discussed about the impacts of the '*Good Governance and the Rule of Law*' on the sustainable development. The author thinks that, good governance can be defined as decision-making in a manner essentially free of abuse and corruption and with due regard to the rule of law. Rule of law is the *sine qua non* for good governance. Essential to this is a fair legal framework, enforced impartially as well as with full protection of human rights, particularly those of minorities. These require an independent judiciary and an impartial and incorruptible police force.

Lankhorst, Hesterklein (2008) titled '*the Intervention Strategy*' deals with some policies that may be applied for compliance issues. It is a systematic approach for attaining maximum compliance. These costs can be both material and immaterial. The Intervention Strategy is part of the Compliance Strategy, in which the focus is on "doing the right things" based on some answer to the question how to do the things right, achieve the purpose of the regulation, and achieve maximum compliance at limited costs.

Romina Piccolotti, (2005) titled '*Water Resource Management: Governance to Eliminate Poverty*' emphasized in a workshop that the vital importance of water and a general consensus of access to clean, healthy and adequate water as a basic human right, individual and collective. In the context of this basic human rights issue, this workshop discussed the opportunity to build bridges about the importance of water with the international human rights community, the world's religious communities, and others. The workshop explored a number of country-specific examples of dealing with the challenges of water protection, water allocation, and water management and then discussed opportunities for INECE to advance global efforts. It may be quite relevant to the fisheries rights and its environment which is healthy to this research topic.

Di Paola, Maria Eugenia, (2002) titled '*Governmental co-ordination and hazardous waste enforcement in Argentina*' deals with the importance of the governmental co-ordination for attaining sustainable development and environment for any country of the world clearly stating the legislation role.

Mauri Carolina (2002) entitled '*the Case Study on Environmental Law Enforcement and Compliance in Costa Rica: Water Pollution with toxic substances*' deals with the dumping poisonous substances into a river, polluting fresh and underground waters in a rural community of San Rafael de Tarrazu in the province of Cartago. The impacts of pollution on the fisheries resources along with other biodiversity impacts have also been discussed.

Mary N. Karanja (1998) '*Good governance and community participation as tools to make environmental enforcement and compliance happen*' deals with the role of good governance and community participation as tools to make environmental enforcement happen. The Agenda 21 along with other International conventions and agreements on environment emphasize the need for community participation in implementation of their objectives. To affect this approach, governments and other development agencies have developed tools to enhance environmental compliance and compliance. This paper's implications may play significant role to the fisheries development issues in Bangladesh.

Durwood Zaelke, Matthew Stilwell, & Oran Young (2005) '*Compliance, Rule of Law & Good Governance*' has discussed the compliance in the broader context of rule of law and good governance, which are required to achieve sustainable development. It presents an argument whose logic is straightforward: sustainable development depends upon good governance; good governance depends upon the rule of law, and the rule of law. If we want to attain the sustainable development and environment in any sectors including the fisheries resources, we need to comply properly with the elements of the good governance including the rule of law.

The INECE (2009) '*Principles of Environmental Compliance and Enforcement Handbook*' provides an actionable guidance for designing effective requirements, setting priorities, monitoring compliance, conducting enforcement response, and measuring program performance.

Results And Discussion

In compliance with the fisheries laws and policy in Bangladesh, we need to discuss and implement the following issues along with the existing findings of the NIECE program in order to attain the sustainable environment and development for the country that should be focused in this study:

Penal Provisions of the Existing Fisheries Laws:

It is identified that around twelve fisheries laws in substantive and procedural in nature and some policies have also been passed for fisheries resource management and administration in Bangladesh. The penal provisions of some of these laws are very insignificant such as one month or three months or with fine which may extend to five hundred taka or with both. Dr. Mohiuddin Farooque, an expert on the environmental laws in Bangladesh, pointed out that the incorporated penal provision is very insignificant because it is an Act around one hundred years ago and it is almost outdated and colonial for which this law does not meet the present needs.

Relevant Procedural Laws of Fisheries in Bangladesh:

Under section 145 of the Criminal Code of Procedure deals with the fisheries related disputes. If any kinds of disputes arising out of water and water bodies such as haors, baors, beels, lakes, wetlands etc., that shall be settled by the Magistrate of the first class for sustainable fisheries conservation and development. It is also mentionable that by settling disputes of fisheries cases, the fish environment is possible to develop. It seems that the fisheries resources may be conserved through the implementation of the relevant provisions of this Code for the environment and development of Bangladesh.

Relevant Constitutional Provisions of Fisheries in Bangladesh:

Our constitution also discussed the fisheries environment as a part of natural resources in Bangladesh. We need to discuss with the article 16 of the Bangladesh Constitution as it is one of the sub sectors of the agriculture. This section states that State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution. The article 16 of the Bangladesh Constitution ensures the agriculture development and encourage to take different measures such as introduce modern technologies, seeds, chemical fertilizers, pesticides for increasing agriculture production to meet up food and fiber shortage, poverty reduction and to uplift the rural economy. Consequently, agriculture production in Bangladesh gradually increases in three or four times at present after independence. Fishery production, as sub sector of the agriculture, also increases tremendously, but in this respect it mentionable that production of cultured fish is increased around 10 times in 1990s. On the other hand, fresh water fish production is decreased alarmingly due to various causes created from the present agriculture systems. These are converted of wetlands to agriculture land resulting decrease the habitation of fish and other aquatic resources, adverse impact of pesticides and chemical fertilizers, etc. Unfortunately, the constitution does provide provisions to overcome these unexpected problems create due to modern agriculture systems.

Judicial responses and some important cases regarding Fisheries in Bangladesh:

There are around fifty reported and unreported fisheries case laws exist in Bangladesh (Environmental Case Laws in Bangladesh) based on the preservation and reservation of the wetland issues in Bangladesh. Most of the cases are disposed by the Supreme Court of Bangladesh and subordinate Civil Courts (Important Environmental Cases). The nature of all the cases is almost same except a few. In addition, a few case laws along with some important cases such as Save Buriganga, Save Rivers, Relocation of Tanneries etc., is given importance.

Biodiversity Issues:

In order to protect the biodiversities including the fisheries in Bangladesh, the government has passed the Bangladesh National Biodiversity Strategy and Action Plan and sets the policy framework. It is crucial for the survival and progress of nature and humanity in Bangladesh. It forms the backbone of the economy in the country. Still around 10,000 species of plants, animals and microbial organisms still flourish in the land (Yousuf Abdullah and Nasir Uddin, 2008).

Case Studies:

As discussed in the methodology, the following information has been discussed here based on the empirical investigation: The laws relating to fisheries are divided into two classes for evaluation in better understanding such as the field based fisheries laws and policy and the research oriented fisheries laws

Research Based Laws- There is one-Research Institute Act carrying out fisheries research in Bangladesh. The respondents are asked about the research activities of the institute. Most of the respondents clearly stated in reply that the performances of research institute are doing well and satisfactory in accordance with the provisions of the Act.

Field Based Laws- The finds that around twelve fisheries laws along with some sectoral laws related to fisheries in the country. In terms of the compliance and implementation of those laws, the respondents are asked but regrets that they are not interested to delivery their speeches about the implementation of the fisheries law and policy issues; because of their official secrecy and it is also a legal matters which are quite sensitive issue in their service. Besides, most of the respondents agreed that the implementation of the laws relating to fisheries is not good at all i.e. it is implemented fifty percent to sixty percent of the total enforcements. The respondents informed us that in addition at present the Government is busy at the implementation of the fisheries extension program. The concerned officers are not interested to study law in enforcements because they are to depend upon their higher official's orders. They are bound to implement that orders in spite of the inconsistency of law and policy in any respect.

Effectiveness -The functions and effectiveness of the fisheries laws and policies are observed partially i.e. it is implemented fifty percent to sixty percent of the total executions of those laws and policies effectively. On an average, the effectiveness of those laws and policies are not satisfactory because of some limitations such as

Political Pressure- The requirement that is need for the implementation of the fisheries law and policy is insufficient. In this regard, the due process of law for implementations is not possible due to political interferences. The political persons influence the implementing authorities. Political pressure is frequently observed in the implementation of those laws and policies.

Masthani -Masthani i.e. the local political pressure or local grouping bears bad impact of fisheries law and policy. Because most of the government's policies especially the fisheries extension policies are not fully implemented in the field due to local grouping or dirty politics in the local areas.

The Illegal Demand of the Ruling Party- The ruling party controls everything of a country, which bears bad or good impact of law and policy. The local ruling party often raises illegal demand for delivery of many goods and services to the party or parties. The application of law is of no use because all things are not measured by laws or as per rules. In addition to that, there are some grounds as shortage of manpower, shortage of vehicles, shortage of modern Equipments and facilities, limited traveling and dearness allowance, Insufficient Infrastructure. The above grounds are equally applicable to the implementation of the fisheries policies in Bangladesh.

Gaps and Problems between the Policy Makers and the Executive Bodies in Bangladesh:

It has been dealt that there are some gaps and problems between the policy makers and the executive bodies in fisheries of Bangladesh. The gaps and the problems presented here are based upon primary and secondary sources.

Legal Gaps- The Punishments that are incorporated to the provisions of the agriculture and fisheries laws are not satisfactorily made; because the range of punishments is very insignificant and this punishment should be enhanced immediately. The incorporated powers should be minimized among all the officers including field staffs. But at present the Upazilla Fisheries Officers have been dealing with this power and functions as discussed. On the other hand, the District Fisheries officers do not exercise this power. This power has only been imposed upon both the Upazilla Officers. This powers and functions should be enhanced to the District Fisheries. At present, the District Officers can only act as their advisor. The executive powers are not imposed upon the District Fisheries Officers. These powers are only lie upon the Upazilla Fisheries Officers. In this regard, the District Fisheries Officers are empowered. Consequently, the Upazilla Officers don't loyal to the District Officers. As a result, the proper implementation of the fisheries laws and policies are not properly

ensured. It is observed that the District and Upazilla Fisheries and officers are to face numerous problems for not getting satisfactorily magisterial works relating to fisheries and in Bangladesh. Dr Mohiuddin Farooque also states that the Magistrate imposes very nominal fine such as Tk. 50 to 200. In many cases, considering the offenders objects and poverty, the Magistrates condense the fine and order him to stay in the courtroom for the day as punishment. The Magistrates treat these prosecutions as petty matters and take long time to dispose of the cases. The District Fisheries Officers are not empowered to appoint to their subordinate the staffs such as Office Assistants, Clerks, and Peons etc; in the position of 3rd class and 4th class employees. But the District Officers of other departments like agriculture, animal husbandry, co-operatives etc., are empowered to appoint those staffs. That is why; the department of fisheries has to face numerous problems in respect of logistic supports. Moreover, it is also a problem of the District Fisheries Officers. It may be told that the absence of recruitment rules affects the fisheries conservation and development in Bangladesh. No provision of financial support- The District or Upazilla Officers are not empowered to utilize their funds for development activities and they are not also empowered for utilizing the local resource management. Absence of appointment of Lawyers - A lot of litigation or cases is filed relating to fisheries and agriculture in Bangladesh. But no provision has been made for the appointment of the departmental lawyers for conducting the cases. That is why, department of fisheries and agriculture has to face many problems for the disposal of the cases related to agriculture and fisheries in Bangladesh. No provision as to giving training and awareness program is held. The awareness program is a crying need for the development of fisheries and agricultural sectors in Bangladesh but this program has not been made clarified or ensured. No provision of budgetary allocation-the concerned officers are not able to assess their own budgets for development purposes. They have to depend upon at the pleasure of the higher officials. The power and functions among the officers are not clearly identified or clearly stated in the fish laws and policies. It is somewhat complicated by nature. The concerned staffs and officers are to suffer due to intransparent provisions of those Acts. The powers and functions of the officers and staffs are not decentralized. It is confined to the central officers who are not directly related to the controlling officers.

Some other observations:

- The fisheries laws are hardly applied in accordance with the objectives of the Acts
- Insufficient man power for execution
- Laws are unenforceable or unimplemented due to cultural, social and economic barriers in the most cases
- Lack of co-ordination among executive agencies
- Lack of knowledge about the application of laws at the operational level
- Lack of emphasis on the objectives of the environment laws
- Institutional weakness and lack of policy orientation
- The proper fisheries laws and policies are insufficient and
- Indiscriminate use of insecticides and pesticides and industrial wastes etc.

Recommendations:

From the above study, in order to attain sustainable development and environment in the fisheries resources in Bangladesh, the following initiatives may be considered in this regard as soon as possible:

- To enhance co-ordination in the concerned stakeholders
- To strengthening compliance institutions such as administrative and Judicial Enforcement mechanisms and the Role of Green Courts etc.
- To revise the related various departments with ICT
- To work with the IUCN Bangladesh
- To promote environmental stewardship
- To increase the level of the technical knowledge
- To introduce bottom up approach
- To eliminate corruption
- To study on the political appointment
- To make contractual Appointment
- To maintain the equity and equalities
- To monitor the irregularities in the office
- To make proper evaluation
- To ensuring humane treatment
- To establishing the rule of law
- To establishing natural justice
- Practical Knowledge to be trained

- To make aware about the bureaucratic policy
- To implement the research findings
- To make Local Consultants
- The Officials to be self-sacrifice minded
- Training to be given to the policy maker and the executives
- Training to be Given to the stake holders
- Traditional Policy Making Process to be Void
- to ensure research activities
- To increase the Field Assistant
- To make change the bureaucratic attitudes in the grass root levels through the fiduciary relations
- To increase Man Power
- To administrative transparency and accountability
- To make steps for ensuring good governess issues
- To remove administrative weakness
- To look at the Problems at the grass root levels
- To make frequent inspection at all levels
- To included the field officers in the Policy Making
- To implement the relevant Policy
- To increase Budgetary Allocation
- To update the recruitment rules and policy
- To observe some special days like weekly, fortnight days, monthly etc
- To introduce awarding systems
- To decentralize the administration etc.

Conclusion:

From the above point of view, it is held that fish and fish species was associated with the major civilizations of the world. In the past, the people of Bengal were popularly characterized by the famous proverb as” *Macche Bhate Bangalee*”. Because the then Bengal was blessed with vast water resources like rivers, canals, haors, beels, ponds and lakes as the growing places of fish. In terms of fisheries laws and policies, it is observed that most of the laws are British colonial era and the inserting punishment is also insignificant which enforcement in Bangladesh. After independence of Bangladesh, the fisheries sector has developed with the help of donor agencies providing projects for conservation and development of fisheries resources. In the mean time, the major fish Act such as protection and conservation of fish Act, 1950, which is a milestone in fisheries. This Act has been brought about with two amendments in the year of 1995 and 2002. Later on, the Government formulated and passed the environment policy in fisheries in 1992 and the fisheries extension policy in 1998. Later on, in aspect of development of fisheries laws, we see that the sectoral fisheries laws are gradually developed. The sectoral fisheries laws such as the embankment and drainage Act, 1952, the territorial waters and maritime zones Act, 1974 etc., is being implemented but in the conservation of fisheries, it is hardly found about the mechanisms for conserving fish habitats due to lacking provisions. In the light of judicial decision, it is found that around 50 cases are filed up. Most of the cases are disposed of and the contention of the cases is about leasing matter. For the further development of the sector, the government enacted the Bangladesh Environment Conservation Act in 995 and it’s Rules in 1997 and finally the Environment Court Act in 2000, which bears significant role for the conservation and development of fisheries and fisheries resources in Bangladesh. Besides, some relevant sections of the substantive laws such as penal code and also the constitutional obligations may be amounted for the conservation and development of the fish and fish species in Bangladesh. But it is regret that these substantive laws bear insignificant provisions for the conservation and development of the fish and fish species, fish habitats, biodiversities and ecosystems etc. There are some obstructions that hinder the fisheries resources. Consequently, it may affect the sustainable environment and development in the economy of Bangladesh. The Government may enact some laws entitled” Sustainable Local Resources Management and Development” for the proper management of the fisheries resources. Under this law, it would be possible easily for the Government to utilize its resources for the purposes of the sustainable development of the country so that the countrymen will meet up the present days needs. Finally, we need to have respect and implement the findings of the INECE program including this study as to the compliance issues in any country of the world.

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Some other important cases' are those cases, which are very much environmentally concern for fisheries at present, Bangladesh.

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